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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

March 18, 2014

2:02 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Telephone Conference, on the Record, Regarding Debtors'

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Objection to the Claim of Becky Spence.

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A P P E A R A N C E S : (All Appearances are Telephonic)

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right. This is Judge Glenn. We're on
3 the record in Residential Capital, number 12-12020. This is
4 specifically with respect to debtors' objection to proof of
5 claim number 3835 filed by Becky Spence.

6 Who's on the phone for ResCap?

7 MR. LEWIS: Good afternoon, Your Honor. Adam Lewis of
8 Morrison & Foerster.

9 THE COURT: All right. And for Ms. Spence?

10 MS. KRIGEL: Good afternoon. Erlene Krigel, Your
11 Honor.

12 MR. LEWIS: Your Honor, Mr. Harris -- Dan Harris of
13 Morrison & Foerster is also on the line for ResCap --

14 THE COURT: Okay.

15 MR. LEWIS: -- the borrower's trust.

16 THE COURT: Thank you.

17 MR. HARRIS: Good afternoon.

18 THE COURT: Good afternoon, Mr. Harris.

19 I'm just making a note here. Just a second.

20 All right. We set up this telephone conference
21 because after the last hearing, each of the parties produced
22 additional documents in response to the Court's direction. And
23 the Court has reviewed those documents. And I'm really, at
24 this stage, trying to decide how to proceed with respect to
25 what seems to me to be a contested matter with respect to the

1 Spence claim and the borrower's trust objection to the claim.

2 Let me make clear that I'm not making any rulings
3 today, and I'm going to talk about what some of the documents
4 appear to show. But I want to make clear that, though this is
5 a factual finding, because what -- and the parties did
6 produce -- did provide documents in response to the Court's
7 direction, for example, the borrower's trust provided the
8 servicing notes, which I specifically asked for, and the Court
9 has reviewed those, if there's an evidentiary hearing, it may
10 well be contested as to the admissibility of what's in the
11 servicing notes. Excuse me.

12 And with respect to what Ms. Krigel filed on behalf of
13 Ms. Spence, there is a huge amount of hearsay which, in its
14 current form, is highly unlikely to be admitted at a hearing.
15 So I'm going to make some observations. And really, what
16 they're designed do, then, is to ask some questions about -- to
17 find out how the parties want to proceed, given what the Court
18 sees as the issues.

19 So I just wanted that as a backdrop. And this is
20 being recorded, so this is on the record. You can all order a
21 transcript from it. So let me -- when you were last here, it
22 seemed to me that the issues that the Court was focused on, at
23 least, were in two areas: the alleged wrongful foreclosure of
24 Ms. Spence's properties and -- so the seven properties -- and
25 as to five of the properties, the Court, I think, observed at

1 the last hearing that the documents reflected that the
2 foreclosure sales were adjourned. The issue that the Court
3 raised was that the Missouri statute only seemed to provide for
4 an adjournment of seven days, and these sales were adjourned
5 for longer.

6 Just to back up a little, Ms. Spence asserts -- or her
7 counsel asserted at the last hearing that Ms. Spence believes
8 the debtors agreed to adjourn the foreclosure sales to give her
9 an opportunity to avoid foreclosure, that she had received
10 reinstatement quotes.

11 Okay. The second area -- in addition to the issues
12 about wrongful foreclosure, the other area -- and I'll talk
13 about it separately -- is over -- and I think the claim pleads
14 it as an interference with contract claim -- was over the
15 collection of the rents, and the issue was whether the
16 assignment of rents clauses were properly triggered by the
17 debtors.

18 Okay. But let's deal with the wrongful foreclosure
19 issues first. And Mr. Lewis, let me say first -- and it may be
20 because it was because of the issues that you thought were
21 before the Court the last go around or not, but I feel like
22 I've been doing the work that you should have been doing all
23 along because the review of the servicing notes reflects very
24 different issues and arguments than you were making. And it's
25 not the Court's job to do the work of counsel -- either side's

1 counsel.

2 With that said, a review of the servicing notes appear
3 to say that Ms. Spence consented to the adjournment of the
4 sales for more than seven days to give her a chance to avoid
5 foreclosure and reinstate the loans. It appears to the Court,
6 on a careful review of the servicing notes, that none of the
7 sales took place until the reinstatement quotes had lapsed.
8 One has to look very carefully as to the notes, as to each of
9 the properties and the reinstatement quotes and when they were
10 set to expire. And as to two of the properties, it appears to
11 the Court that there is error -- there are typographical errors
12 in two of the deeds. But it looks to the -- and again, I'm not
13 resolving any factual issues, but it looks to the Court that
14 all of the sales took place after the reinstatement quotes had
15 lapsed without Ms. Spence paying the money that was due in
16 reinstating the loans.

17 So Ms. Spence -- the issue I had focused on at the
18 last hearing was, under Missouri law, it appears -- it appeared
19 that the trustee -- and I think this is true -- the trustee can
20 only adjourn the sale for not to exceed seven days. But the
21 servicing notes -- if I can find in my notes here -- the
22 servicing notes appear to reflect that the sales were adjourned
23 for more than seven days on consent of Ms. Spence. And the
24 Missouri statute -- let me find it in my notes here -- Section
25 443.355 of the Missouri revised statute "does not prevent the

1 holder of a security instrument and the owner of the land
2 encumbered thereby from agreeing to more than one continuance
3 or to continuances for more than one week."

4 And as I say, the servicing notes, at least, reflect
5 that Ms. Spence consented to a longer continuance to try and
6 give her a chance to reinstate the loans. So if that -- if the
7 debtors are able -- I don't know what Ms. Spence is going to
8 say about whether she consented, but servicing notes, at least,
9 reflect that. Then it's going to be an issue of whether the
10 debtors are able to introduce the servicing notes as the
11 necessary evidence on that. But I was concerned at the last
12 hearing that it -- and I found Mr. Lewis' arguments quite
13 unpersuasive when he argued that full compliance with the
14 Missouri statutes weren't required, a position I'm not willing
15 to take. I thought that was a pretty weak argument. But you
16 don't have to go there because it looks like Missouri law
17 specifically allows a longer continuance with consent, and the
18 servicing notes seem to reflect that consent was received.

19 So as to -- again, I'm not making any findings now,
20 and I'd have to listen to the evidence if we get to that. But
21 Ms. Krigel, I think you've got a real uphill battle in showing
22 wrongful foreclosure. It looks like none of the foreclosure
23 sales occurred until after the reinstatement quotes lapsed.
24 And I think it was uncontested that Ms. Spence never, in fact,
25 paid the money that was required to reinstate the loans.

1 MS. KRIGEL: Your Honor, I actually believe there
2 were. There was one foreclosure that occurred the day before
3 the reinstatement quote expired. The sale date was on, I
4 believe, the 10th, and the date was given until the 11th on one
5 property. And then there were two properties that were later
6 foreclosed, but there were also reinstatement quotes that went
7 beyond that second foreclosure date. I'm looking at my notes
8 here.

9 For example, my Exhibit I, that had Gaslight (ph.) and
10 Glenwood were good through July 22nd, but --

11 THE COURT: Yeah, and the final sale date was July
12 23rd on Gaslight.

13 MS. KRIGEL: Oh, okay. And --

14 THE COURT: And on Glenwood, the reinstatement
15 deadline was July 22nd, and the final sale date was July 23rd.
16 And on Homewood, the final sale date was June 11th. It
17 looked -- I mean, I got a chart. We went through --

18 MS. KRIGEL: Okay.

19 THE COURT: We spent a lot of time on this.

20 MS. KRIGEL: Okay.

21 THE COURT: And it looks like the -- and look, I'm not
22 making any findings, Ms. --

23 MS. KRIGEL: Sure.

24 THE COURT: -- Krigel. And --

25 MS. KRIGEL: No, I understand.

1 THE COURT: But before you and your -- before your
2 client decides to go spend a lot of money by going ahead and
3 litigating, you better figure out really what you got a good
4 claim on. I'll just tell you that there were two of the deeds
5 that had -- it looks like the dates weren't corrected, okay?
6 And it's those two. It's Gaslight and Glenwood.

7 MS. KRIGEL: Um-hum.

8 THE COURT: It looked like there was a scrivener's
9 error in the trustee's deed under sale. It refers to a sale on
10 June 25th, but in fact, the date of the instrument is July
11 23rd. So it just -- and the servicing notes say the same
12 thing. The servicing notes are consistent with that. So I --
13 you can look -- I don't expect you to respond to that now. But
14 if you look carefully, it looks like with Gaslight, the
15 original sale date, June 25th, was postponed by agreement. And
16 Glenwood, the original June 25th sale date was postponed by
17 agreement. The final reinstatement dates on both of those
18 properties were July 22nd, and the sales were actually on July
19 23rd.

20 So I mean, you ought to -- we spent a lot of time
21 going over this, because -- I mean, I'm troubled -- I was -- I
22 think your arguments were fair arguments that you made. And
23 this is not an evidentiary hearing, but I think you've got an
24 uphill battle on it.

25 MS. KRIGEL: Okay.

1 THE COURT: And with respect to the other properties,
2 3864 South Cottage, 3870 South Cottage, 3871 South Cottage,
3 2770 West LaSalle and 3877 South Homewood, the reinstatement
4 dates were June 10th, June 17th -- four of them were June 10th,
5 one was June 17th. And on each of those, it looks like the
6 final sale was the day after the reinstatement quote lapsed.
7 So on 3864 South Cottage, for example, it looked like the final
8 reinstatement date was June 10th; the sale was June 11th. 3877
9 South Cottage, the final reinstatement deadline was June 10th;
10 the sale was June 11th. 3871 South Cottage, the final
11 reinstatement date was June 17th; the sale was June 18th. 2770
12 West LaSalle, the final reinstatement date was June 10th; the
13 sale was June 11th. 3877 South Homewood, the final
14 reinstatement date was June 10th; the final sale was June 11th.

15 I've already referred to Gaslight and Glenwood. Both
16 of those sales were July 23rd. It looks like the final
17 reinstatement date was July 22nd, the day after. So in each
18 of -- for each of the properties, it appears that the sales
19 actually took place after the reinstatement quotes had lapsed
20 without Ms. Spence being able to pay the money to avoid
21 foreclosure. So -- and that -- I think underpinning my, at
22 least, tentative analysis with respect to all of these
23 properties is what I raised -- I mean, I -- at the time of the
24 hearing -- the last hearing, the issue seemed to be whether the
25 adjourned sale dates were permissible, because it was more than

1 the seven days after the original date.

2 And there, I'm looking at these servicing notes, for
3 example. So if you -- and I don't expect you to do it now, Ms.
4 Krigel, but -- I guess these are all -- on June 25th, 2008,
5 there's a -- one of the entries is "per client request PP sale
6 for" -- which I think is postponement sale -- "for thirty days
7 by agreement". Thirty days by agreement is in quotes. New
8 sale date, July 23rd. So that's entered -- is an entry on June
9 25th. And there are similar entries for the other properties
10 about postponed by agreement. And Missouri law permits that,
11 at least that's certainly my reading of Missouri law is that
12 the noticing statute, which is Missouri revised statute 443.310
13 and 443.320 and 443.355, permit a longer than seven-day
14 adjournment on consent. So there's the issue of consent.

15 What Ms. Spence would testify, I don't know. And
16 whether the debtors can -- the borrower's trust can
17 successfully introduce the notes in evidence, we'll see. And
18 whether they have a witness or not, I don't know. I just --
19 just looking at the paper trail, I think you're going to have
20 an uphill battle on this, Ms. Krigel.

21 MS. KRIGEL: All right.

22 THE COURT: Okay. So with respect -- let me shift,
23 then I'll give you both the chance to respond. The other area
24 was over the assignment of rents. And there, at least on
25 review of Missouri law is not at all clear what's necessary to

1 trigger the assignment of rents. I think, initially, Ms.
2 Krigel, you argued it had to be in writing. And then, you
3 seemed to drop the argument it had to be in writing. You
4 submitted some statements of tenants; certainly in their
5 current form, you're not getting any of those into evidence.
6 Whether you can get deposition testimony -- I guess all these
7 people are out of state. I guess they could testify by
8 deposition. The borrower's trust could certainly cross-examine
9 at deposition. What you can get it, I don't know at this
10 point.

11 I do have -- one of the things that I focused on --
12 and Mr. Lewis or Mr. Harris, maybe you can answer this or maybe
13 Ms. Krigel can -- in Ms. Spence's bankruptcy case, have any of
14 the debtors filed a claim for a deficiency? I mean, the
15 properties were sold for less than the amounts of the mortgage.
16 It was like -- I tried to think about it. I couldn't remember
17 whether anybody addressed this issue. Have the debtors filed a
18 deficiency against Ms. Spence with respect to any of the
19 foreclosed properties?

20 MR. LEWIS: Your Honor, it's Adam Lewis. I don't know
21 the answer to that question. Maybe Ms. Krigel does since she's
22 representing Ms. Spence in that case and may have been watching
23 the claims docket.

24 MS. KRIGEL: I don't remember, Your Honor. I'd have
25 to look back at the claims register.

1 THE COURT: Yeah, I didn't think so, but that doesn't
2 count for anything, frankly.

3 MR. LEWIS: And Your Honor, it's Adam Lewis. I kind
4 of doubt it, but we can certainly check on that.

5 THE COURT: Here's the reason I raise that issue.
6 Okay. So let's just assume for a second that the debtors
7 didn't properly trigger the assignment of rents. And it
8 remains a mystery to me what has to be done under Missouri law
9 to do that and whether it requires just simply tell the tenants
10 don't pay the landlord the rent. Is that sufficient? Is it
11 don't pay the landlord; pay me? Is that required? The part
12 about pay me.

13 So Ms. Spence -- Ms. Krigel, you put in your -- I
14 think your argument was that Ms. Spence would have -- if she
15 had collected the rent, she would have used the money to make
16 up a shortfall on some other property. And I have some real
17 question about that. I mean, I don't think there's any doubt
18 that the debtors could have triggered the assignment of rents
19 clause. Whether they did or not remains to be decided. So
20 let's assume that what they did was insufficient, and Ms.
21 Spence didn't get paid the rent. The properties got
22 foreclosed. Was the amount of the rent that was withheld,
23 would that have been enough? I can't imagine there was enough
24 to reinstate the loans.

25 I mean -- and if there's no deficiency claim, I don't

1 see what injury or harm there's been to Ms. Spence. Certainly,
2 if the debtors were seeking a deficiency judgment, and they had
3 diverted the rents from Ms. Spence to themselves, for example,
4 I think they'd have to give her a credit, at least, for
5 whatever they collected. And if it just simply wasn't
6 collected, I mean, somebody may have a claim against the
7 tenants or former tenants for the unpaid rent. But it's hard
8 for me -- if the foreclosure -- if there was no deficiency, and
9 the amount of the loans exceeded the values of the -- I guess
10 we have the sale prices. It looks like she comes up short on
11 all of them. I'm not sure how she's hurt by it.

12 So that's sort of the state of the Court's thinking at
13 this point. And I want to give you both a chance to address
14 it. I'll tell you right now, Ms. Krigel, if what you want is
15 to go -- look, any trial's going to be a trial in my courtroom.
16 You may be entitled under the Federal Rules of Civil Procedure
17 to introduce testimony of witnesses who can't be subpoenaed
18 because -- in this court by deposition, so you're going to head
19 down the road of taking a bunch of expensive depositions.
20 Where it's going to get you, I don't know, but that's not for
21 me to say at this point. I'm not telling you you can't do
22 that. But --

23 MS. KRIGEL: Well, Your Honor, I think what I would
24 hope for is that if there -- if we had a submissible case based
25 on what evidence would show, I would hope that debtors'

1 counsel, in recognizing that Ms. Spence, like a lot of other
2 homeowners/borrowers, don't have the resources to pursue an
3 evidentiary hearing and that they would sit down to the table
4 and hopefully reach a settlement based on the potential merits
5 of the case as opposed to being a good advocate in litigation
6 and hoping to just be successful because they can outspend.

7 THE COURT: I would hope so, too, because -- look,
8 I won't even necessarily attribute a good heart and good
9 motives to the borrower's trust. It costs them money as well,
10 okay? Where are these properties? Remind me. Mid-Missouri?

11 MS. KRIGEL: Mid-Missouri.

12 THE COURT: If they've got to go off to Missouri to
13 take or defend a lot of depositions in Missouri, the meter is
14 running on all of them, and it's coming out of the borrower's
15 trust. So look, the borrower's tr -- look, I will -- this
16 isn't to give you any false hope. In at least one other matter
17 where I had overruled an objection and said, if necessary, I'll
18 sit down at an evidentiary hearing and actually had the parties
19 in the courtroom in front of me, well, before they left the
20 court that day, they had settled it. So I think -- the
21 borrower's trust has not demonstrated that it wants to act
22 vindictively to anybody. I think they'll make rational
23 decisions.

24 I think -- my clerks, even more than I, have spent
25 more time than one might have wanted to reviewing these

1 documents. I'm glad we did. I mean, the servicing notes,
2 it -- look, with respect to foreclosure, I think if you dig
3 down it tends to support the borrower's trust's position. And
4 as I say, Missouri law does permit the sales to be adjourned
5 for more than seven days on consent. And those notes, the
6 borrower -- the servicing notes expressly reflect by agreement.
7 So you'll talk to your client and you'll see.

8 I think that -- here's what I would like to do. You
9 each need to go talk to your clients, and then you need to talk
10 to each other. And if you're going to -- if the decision is go
11 ahead and litigate this, then what we're going to do is you're
12 going to try and negotiate -- it's a contested matter, but I
13 apply the Federal Rules of Civil Procedure, the discovery
14 rules, and I apply the rules of evidence. So whatever
15 anybody's going to offer is going to comply with the rules of
16 evidence.

17 In the first instance, I want you -- if the decision
18 is to go ahead and litigate, you need to try and work out a
19 case management order and scheduling order that includes
20 deadlines for completion of fact discovery. I don't see this
21 as involving any expert discovery. This seems to be
22 essentially factual questions, not expert questions. But if
23 you think you're entitled to an expert, I'm not precluding it.
24 But I want to give you a couple of weeks to talk to your
25 clients and then, if necessary, hopefully negotiate a

1 settlement or negotiate the terms of a case management order.
2 And then, we'll have another telephone hearing. And if I need
3 to -- and I will schedule -- we'll set -- an order will get
4 entered setting the schedule. And just so you know, Ms.
5 Krigel, things don't linger on my docket.

6 MS. KRIGEL: Okay.

7 THE COURT: So on a matter like this, if you got to
8 take a bunch of depositions and stuff, I'm going to give you 90
9 or 120 days to complete fact discovery. And you'll get a very
10 prompt trial date.

11 MS. KRIGEL: Well, I appreciate that, Your Honor.

12 If I might just briefly address the assignment of
13 rents --

14 THE COURT: Yeah, please, go ahead.

15 MS. KRIGEL: -- issue that you -- because you had
16 raised a couple of questions.

17 THE COURT: I did.

18 MS. KRIGEL: I think that while we would like to say
19 that it would be the burden of the lender to make a written
20 assignment -- I'm sorry, to make a written demand that would
21 perfect their assignment of rents, we acknowledge that they
22 sent an agent out to the properties and they made an oral --

23 THE COURT: Um-hum.

24 MS. KRIGEL: -- demand. But they didn't -- the demand
25 was not you must pay your rent to the lender. It was that Ms.

1 Spence was in default, and do not pay her the rent. And so our
2 argument is, first, that in the first instance they didn't
3 perfect their assignment because their notice -- their oral
4 notice was insufficient. It didn't tell the tenants where to
5 pay it or an address or who to pay it, and so as a result of
6 that, the tenants didn't pay. They didn't pay Ms. Spence, but
7 they didn't pay anyone else.

8 So why is that significant? Well, it's significant
9 because she was -- she would have cash flow. That amount that
10 she would -- and that would be her testimony. The amount of
11 rent she was collecting was enough to cover the mortgage
12 payment. And while it may not have completely brought her
13 current with her arrearage that she had, I mean, she could have
14 potentially picked and chosen between the seven properties and
15 had enough rents to maybe bring some of them current, maybe to
16 the sacrifice of others. But she didn't have that.

17 And moreover, they didn't collect the rents. And
18 therefore, they didn't reduce down her balance and diminish her
19 arrearage.

20 THE COURT: That's why I -- let me just interrupt you
21 to this extent. That's why I focus on the fact -- with
22 foreclos -- with her own bankruptcy -- that's why I asked the
23 question about a deficiency -- if she hadn't filed a
24 bankruptcy -- I'm not wishing that on anybody; trust me -- I'm
25 not sure how she's harmed as long as they're not seeking a

1 deficiency judgment against her.

2 But go ahead. I interrupted you, Ms. Krigel.

3 MS. KRIGEL: No, that's all right.

4 Well -- so the other -- the comment to that is that
5 this was in 2008 before the market tanked. She had equity in
6 those properties. So it's quite possible and probable that
7 there was no deficiency because they bid in what was owed,
8 because they believed, as we did, that the properties not only
9 were worth what was owed, but were worth more. And that is
10 part of our claim for damages is that about 460,000 dollars for
11 the seven properties was her projected equity based on her
12 approximate loan balance and the approximate value of the
13 properties. They --

14 THE COURT: Let me ask you this, Ms. Krigel. What --

15 MS. KRIGEL: Yes.

16 THE COURT: I mean, I know what the sales price is --
17 what the purchase prices of the properties were at the
18 foreclosure sale. It was my understanding that the mortgage
19 balance exceeded the purchase price in every case. Is that
20 right or wrong?

21 MS. KRIGEL: I don't know, Your Honor.

22 THE COURT: So for --

23 MS. KRIGEL: So I don't know.

24 THE COURT: So for 3864 South Cottage, the purchase
25 price was 114,240. For 3870 South Cottage, it was 114,665.

1 For 3871 South Cottage, it was 118,915. For 2770 West LaSalle,
2 it was 107,865. For 3877 South Homewood, it was 110,075. For
3 1061 East Gaslight, it was 215,910 dollars. For 1413 West
4 Glenwood, it was 73,950. So I don't have -- in the chart I
5 have in front of me, I don't have what the mortgage balances
6 were in each case. It was my impression, and just that, that
7 the balances exceeded those purchase prices. So you're going
8 to have to show, it seems to me, that the value of the property
9 was something different than what it sold for at auction.
10 That's a pretty heavy burden.

11 I understand foreclosure values are -- foreclosure
12 prices are frequently depressed, but that's the nature of the
13 beast. So --

14 MS. KRIGEL: Well --

15 THE COURT: -- showing that she had equity, I think is
16 going to be a tough sale for you. I'm -- again, I'm not making
17 any rulings at this point.

18 MS. KRIGEL: Oh.

19 THE COURT: But I spent a lot of time studying this.
20 Go ahead, Ms. Krigel.

21 MS. KRIGEL: Thank you, Your Honor. Well, I would say
22 that I'm somewhat familiar with the valuation of these
23 properties only because in her personal Chapter 11, we actually
24 had a valuation hearing last Thursday. And the lenders -- even
25 though the values have definitely gone down, the lenders are

1 asserting that the values are really higher than even those
2 numbers that you were quoting. And all of Ms. Spence's
3 properties are generally in the same neighborhoods and all
4 approximately within the same -- the type of house -- and some
5 are four bedrooms, some of three bedrooms, but generally all
6 within the same. So I do think we would have testimony as to
7 what the value of the properties were back then, because I
8 would bet that the lenders have appraisals in their files,
9 because if they were going to foreclose, they would have most
10 probably gotten a BPO or an appraisal of the property.

11 THE COURT: No. Each of the properties -- well, I'm
12 not going to say that. I think -- the only property I have a
13 question about is the 3864 South Cottage. As to all the other
14 properties, the properties were resold. And I don't know the
15 prices at which they were resold.

16 MS. KRIGEL: Okay.

17 THE COURT: So for example, 3870 South Cottage was
18 sold in November 11th. I guess that's 2008.

19 MS. KRIGEL: Um-hum.

20 THE COURT: And all the other properties were resold
21 in 2009. So I have -- we've seen the dates. I don't know what
22 the prices that they were resold.

23 MS. KRIGEL: Okay. And I can also say, Your Honor,
24 that Missouri is a terrible state for borrowers in -- with
25 respect to foreclosures, because being a nonjudicial

1 foreclosure state, our law on challenging the validity of a
2 foreclosure is that the court has to find that the sale price
3 shocks the conscious of the community. And the courts have
4 found that, frankly, you can bid just about anything, and it
5 doesn't shock the --

6 THE COURT: Right.

7 MS. KRIGEL: -- court.

8 THE COURT: Well, that's why I'm interested --

9 MS. KRIGEL: So --

10 THE COURT: -- in what they resold the properties at.

11 MS. KRIGEL: Yeah.

12 THE COURT: -- I had that -- we tried to look at that
13 specifically. I wanted to see whether the price that they
14 bought it in at a foreclosure, did they then double their money
15 or something when they resold it? I have no idea what they
16 resold them for. I just have -- I've got dates, but not
17 amounts.

18 MS. KRIGEL: Okay. Well, and that is something, I
19 guess, if we get to that point, we could provide or maybe
20 provide to counsel for the debtor that might then indicate that
21 we had --

22 THE COURT: Ms. Krigel, if you got a couple hundred
23 thousand dollars to litigate the case with, this might be an
24 interesting trial.

25 MS. KRIGEL: Yeah. No, we don't, Your Honor.

1 THE COURT: And I don't -- look, I want to make clear
2 I don't say that to try and dissuade Ms. Spence from or you
3 from arguing your positions. It's the real world.

4 MS. KRIGEL: Yeah.

5 THE COURT: And I'm not telling you anything you don't
6 know. Look, what I -- that's why I wanted to have this --
7 there will be a transcript of this conference. You can -- you
8 all need to talk to your clients. You need to talk to each
9 other. You ought to see whether you can resolve this. If
10 you're going to go ahead and litigate it, it's going to get
11 expensive for both sides. And it does come out of the
12 borrower's trust pocket. It affects all of -- which money is
13 going to borrowers, so it isn't that this money is going to any
14 deep pockets or anything like that.

15 MR. LEWIS: Your Honor, if I may have just a moment.

16 THE COURT: Yeah. Go ahead, Mr. Lewis.

17 MR. LEWIS: I don't want to reargue the merits. That
18 will be for another day if we get there.

19 A couple of quick things. The first is a question.
20 It sounds like the Court has decided that our arguments about
21 the claim being either late or barred, the Court has rejected
22 those.

23 THE COURT: I'm not ruling on anything today --

24 MR. LEWIS: Okay.

25 THE COURT: -- Mr. Lewis.

1 MR. LEWIS: Okay. I just wanted clarification. I'm
2 not asking for anything more than that. I just want to know
3 where we stand and what's --

4 THE COURT: I'm --

5 MR. LEWIS: -- still at issue and what isn't.

6 THE COURT: I'm not ruling on anything.

7 MR. LEWIS: Okay. Great. Thank you.

8 Secondly, as a general matter, we are always willing
9 to talk settlement. We're not in the practice, which I think
10 the Court acknowledged, of litigating people to death in order
11 to win. It's not an efficient use of our money, which, after
12 all, goes to other creditors who have also suffered losses.
13 And so we're more than willing to talk to counsel and Ms.
14 Spence about a settlement, but it will be a settlement that
15 reflects what we believe the risks and merits are, along with
16 the costs.

17 THE COURT: You'll have to talk to Ms. Krigel. I'm
18 not getting in the middle of --

19 MR. LEWIS: Yeah.

20 THE COURT: -- your settlement.

21 MR. LEWIS: No, no. And I'm not asking the Court to
22 get involved in settlement discussions. I'm just stating what
23 our approach is so that the Court understands it and so Ms.
24 Krigel understands it, that we're always willing to talk
25 settlement.

1 MS. KRIGEL: Thank you.

2 THE COURT: What's the status of Ms. Spence's Chapter
3 11, Ms. Krigel?

4 MS. KRIGEL: Well, unfortunately, last Thursday was
5 valuation and confirmation hearing. And Judge Federman denied
6 confirmation as he believed that her plan was not feasible
7 given her income.

8 THE COURT: Okay.

9 MS. KRIGEL: So we're at the point now where we're
10 considering whether to convert to Chapter 7 or have it
11 dismissed.

12 MR. LEWIS: And Your Honor, this is Mr. Lewis; while
13 we've been talking an awful lot on -- and we did not file a
14 proof of claim in her Chapter 11 case.

15 THE COURT: Okay. Look, here's what I'd like you to
16 do. The two of you clearly need to talk. One of you needs to
17 get a date from my courtroom deputy, Deanna Anderson, for
18 another telephone conference, I'd say, in three weeks or so,
19 okay? And work it out with Deanna and get a date that works
20 for both of you. I'm letting you all appear by telephone.

21 Mr. Lewis, you're in San Francisco. Is that --

22 MR. LEWIS: Yes.

23 THE COURT: Yeah? Okay.

24 And Ms. Krigel, where are you? You're in Missouri?

25 MS. KRIGEL: In Kansas City, Your Honor.

1 THE COURT: In Kansas City? Okay. I guess that's
2 where Judge Federman sits.

3 MS. KRIGEL: Yes.

4 THE COURT: He's a wonderful judge, I got to tell you.
5 And I just --

6 MS. KRIGEL: Thank you. We think so too.

7 THE COURT: So look, get a date for a tel -- I
8 generally do these telephone conferences in the afternoon.
9 Sometimes, it's later than 2 o'clock, depending on what my
10 calendar is. But get a date. Talk. Get a date from Deanna.
11 See what you can do.

12 I don't want a lot of paper flying back and forth in
13 this. So what -- this all started with the debtors' objection
14 to the claim. It was a pretty boilerplate objection. We've
15 been through rounds of submissions. I had you both put in
16 additional materials. I think if it's going to get litigated,
17 I'm going to enter a case management order. It's going to have
18 a call for discovery. You will know what you need to submit
19 and when and that sort of thing. And if you're actually going
20 to have expert valuation testimony, there'll be dates for
21 expert reports and close of expert discovery and that sort of
22 thing. And then, there'll be a trial shortly -- within a
23 couple of weeks after the last papers are in.

24 So that's where we are, okay?

25 MS. KRIGEL: Very good.

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1 MR. LEWIS: Thank you, Your Honor. This has been very
2 helpful. I really appreciate the insights.

3 THE COURT: Okay.

4 MS. KRIGEL: Thank you very much.

5 THE COURT: All right. Thanks very much, everybody.
6 We're adjourned.

7 MS. KRIGEL: Okay.

8 (Whereupon these proceedings were concluded at 2:44 PM)

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C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.



ALIZA CHODOFF

AAERT Certified Electronic Transcriber CET**D-634

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Date: March 19, 2014